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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1272**

Kenneth H. Youngdahl, Jr., et al.,
Plaintiffs,

Wells Fargo Bank, NA,
Appellant,

vs.

HBC Enterprises,
Respondent,

Jeffrey Thomas Phillippi, et al.,
Respondents.

**Filed May 20, 2008
Affirmed
Klaphake, Judge**

Washington County District Court
File No. C2-06-5391

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Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this action to quiet title, appellant Wells Fargo Bank, NA, challenges the district court's grant of summary judgment in favor of respondent HBC Enterprises. The district court determined that HBC, the purchaser of the sheriff's certificate at the foreclosure sale of the condominium association's assessment lien, held all right, title, and interest in the condominium unit. Appellant argues that its mortgage, although granted after the foreclosure of the assessment lien, survives the expiration of the redemption period of the assessment lien foreclosure because it has priority over the assessment lien under Minn. Stat. § 515B.3-116(b)(ii) (2006). Appellant also argues that the district court erred by summarily dismissing its claim for equitable relief.

Because we conclude that the assessment lien did not survive the foreclosure sale and because the district court did not clearly abuse its discretion in failing to grant appellant equitable relief, we affirm.

DECISION

Applicability of MCIOA

The appropriate standard of review for summary judgment is whether the district court erred in applying the law and whether there are any genuine issues of material fact. *Harbal v. Fed. Land Bank of St. Paul*, 449 N.W.2d 442, 446 (Minn. App. 1989), *review denied* (Minn. Feb. 21, 1990). There are no material issues of fact in dispute. The construction of a statute is a question of law subject to de novo review. *Id.*

The condominium unit at issue (the property) is part of a condominium association. An assessment lien was filed by the association against the property under the provisions of the Minnesota Common Interest Ownership Act (MCIOA). Minn. Stat. §§ 515B.1-101 to .4-118 (2006). HBC was the highest bidder at the assessment lien foreclosure sale. A sheriff's certificate was issued to HBC, subject to redemption rights as set forth by statute. Neither appellant nor its mortgagors attempted to redeem the property before the expiration of the redemption period.

Appellant's mortgage was recorded more than two months after the assessment lien was foreclosed. At the time that appellant's mortgage was granted, there was no assessment lien in existence, only the interest of the purchaser of the sheriff's certificate resulting from the foreclosure of the assessment lien. Appellant argues that its mortgage, even though granted after the foreclosure of the assessment lien, survives the expiration of the redemption period because it has priority over the assessment lien under the provisions of MCIOA, and therefore appellant has priority over HBC, the purchaser of the sheriff's certificate.

An assessment lien "is prior to all other liens and encumbrances on a unit except . . . any first mortgage encumbering the fee simple interest in the unit . . ." Minn. Stat. § 515B.3-116(b)(ii). If appellant's mortgage had been granted any time before the foreclosure of the assessment lien, appellant would be correct in asserting that its first mortgage would be prior to any existing assessment lien pursuant to Minn. Stat. § 515B.3-116(b)(ii). However, once the assessment lien is foreclosed, there is no assessment lien for the first mortgage lien to trump. Because there was no assessment

lien over which appellant's mortgage could take priority, Minn. Stat. § 515B.3-116(b)(ii) does not apply.

Appellant insists that the assessment lien continued to exist after the foreclosure sale and that the holder of the sheriff's certificate purchased and held this lien after the sale. We disagree. The assessments secured by the association's lien were satisfied in full with the proceeds from the sheriff's sale. Therefore, any lien existing in favor of the holder of the sheriff's certificate after the foreclosure sale was not a lien securing the association's assessments, but a lien securing the bid at the foreclosure sale, and as such, is not governed by the provisions of Minn. Stat. § 515B.3-116(b)(ii). *See State v. Zacher*, 504 N.W.2d 468, 471 (Minn. 1993) (holding that when the mortgagee is the purchaser at a foreclosure sale, until the expiration of the redemption period, "he has a lien on the premises and holds them for the security of his bid[,]” rather than as security for the underlying debt); *Buchanan v. Reid*, 43 Minn. 172, 175, 45 N.W. 11, 12 (1890) (allowing purchaser at foreclosure sale to redeem as a creditor having a lien even after its mortgage debt was satisfied by the sale because the purchaser held a lien against the property for the purchase price).

Moreover, HBC did not purchase the homeowners' association's lien as appellant contends. The purchaser at a foreclosure sale does not become an assignee or owner of the lien being foreclosed and satisfied by the sale. The foreclosure statutes provide for the sale of mortgaged *property*, not for the sale or assignment of the mortgage or lien. “[R]edemption is made from the purchaser as purchaser, not as assignee of the mortgage; and by the payment of the amount of [the] bid at the sale, with interest, whether this sum

be more or less than the amount due on the mortgage.” *Tinkcam v. Lewis*, 21 Minn. 132, 137 (1874). A purchaser at a foreclosure sale takes title to the land being purchased subject to the previous owners’ equitable right of redemption. *Bradley v. Bradley*, 554 N.W.2d 761, 764 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996). Although the purchaser of property at a sheriff’s sale does not acquire a right to immediate possession of the property sold at the sale, or the right to enjoy the benefits of that property during the redemption period, the purchaser has a vested ownership interest in the property that can be divested only by a redemption. *Harbal*, 449 N.W.2d at 447. The failure of appellant and its mortgagor to exercise their rights of redemption extinguished all of their interests in the property. The district court did not err in determining that all right, title, and interest in the property is held by HBC and in refusing to apply Minn. Stat. § 515B.3-116(b)(ii) to give appellant’s mortgage priority over the interests of HBC.

Equitable Relief

Appellant claims the district court erred by summarily dismissing its claim for equitable relief. Appellant contends that the unjust enrichment of HBC in this case merits equitable relief. The determination to grant or deny equitable relief is within the sound discretion of the district court and will only be reversed upon a showing of a clear abuse of discretion. *Bradley*, 554 N.W.2d at 763. Appellant believes HBC was unjustly enriched because appellant paid an underlying first mortgage in full and HBC takes title free and clear of that first mortgage, as well as appellant’s mortgage, for a nominal price.

The Minnesota Supreme Court concluded that inadequacy of price alone is generally insufficient to set aside an execution sale, absent irregularities in the conduct of

the sale. *In re Petition of Nelson*, 495 N.W.2d 200, 202 (Minn. 1993). Appellant has claimed no irregularities in connection with the lien foreclosure sale, only inadequacy of price. In fact, the provisions of MCIOA specifically anticipate the likely discrepancy between the value of the property and the amount of an assessment lien and provide that under a foreclosure of an assessment lien, “the amount of the association’s lien shall be deemed to be adequate consideration for the unit subject to foreclosure, notwithstanding the value of the unit.” Minn. Stat. §515B.3-116(h)(4)(iv).

Further, to establish a claim for unjust enrichment, there must be illegal or unlawful conduct by the party receiving the benefit. *Servicemaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996). There is no evidence or claim of improper behavior by HBC. Given the absence of any irregularity in the conduct of the foreclosure sale and any wrongful behavior by HBC, the district court did not abuse its discretion in failing to grant appellant equitable relief.

Affirmed.